S.B.CIVIL WRIT PETITION NO.1004/1995

Rakesh & Company
v.
Mohabbat Singh & Anr.

DATE OF ORDER :: 21st March, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.R.Singhvi, for the petitioner.
None Present, for the respondents.

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The short question involved in this petition for writ is that whether the Labour Court erred while holding that the respondent workman was retrenched from service by the employer and not abandoned the same at his own.

In brief, facts of the case are that the appropriate government referred an industrial dispute to Labour Court, Jodhpur in the terms "whether termination of workman Shri Mohabbat Singh son of Shri Lal Singh w.e.f. 17.4.1987 by Manager, Rakesh & Company, Chopasani Road, Jodhpur is justified and legal? If not, then for what relief the workman is entitled?"

The Labour Court by the award impugned dated 11.11.1994 while answering the reference held that termination of workman Mohabbat Singh by the employer on 17.4.1987 amounts retrenchment and the same was effected without adhering the mandatory condition precedents to do so as prescribed under Section 25-F of the Industrial Disputes Act, 1947. The Labour Court

by declaring the retrenchment illegal and unjustified ordered for reinstatement of the workman with 50% of back wages from the date of his termination from service.

The contention of the counsel for the petitioner is that from the evidence available on record it was amply proved that the workman abandoned the service, as such the Labour Court erred by holding that the workman was retrenched. To substantiate the contention it is pointed out by counsel for the petitioner that a direction was given by the employer to the workman under a notice dated 14.7.1987 to join the duties but he refused to do so by giving a response to the notice that the issue pertaining to his service was subject matter of a dispute pending before competent authority, therefore, he would act according to that only. It is further asserted by counsel for the petitioner that during conciliation proceedings also offer to join service was reiterated but the workman never reported on duty and this conduct amply proves that he was not interested to continue in service.

No reply to the writ petition has been filed on behalf of the respondents.

From record of the case it is apparent that under a notice dated 14.7.1987 an instruction was

given by the employer to the workman to resume duties but by a specific denial he refused to join duties. It is also a position admitted that even during conciliation proceedings an unconditional offer was given by the employer to the workman for joining duties but that too was not accepted by him.

Learned Labour Court while holding the termination of the petitioner from service a retrenchment has not taken into consideration these facts. From perusal of the record it is apparent that the workman was never interested to work with the petitioner and as such the natural inference that could have been drawn is with regard to abandonment of service and not of effecting termination from service. Learned Labour Court as a matter of fact without having sufficient material on record and ignoring the facts stated above with regard to conscious denial for joining duties gave a finding that the employer retrenched the workman. The finding so given is apparently perverse.

In view of it, this petition for writ deserves acceptance. The same, therefore, is allowed. The award impugned dated 11.11.1994 is quashed.

(GOVIND MATHUR),J.

Kkm/ps.